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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/853,227      | 05/11/2001  | Douglas Allan Royce  | 4519RC2R2           | 6354             |

27752 7590 07/16/2003

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EXAMINER

WEBMAN, EDWARD J

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 07/16/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**Application No.  
09/853227Applicant(s)  
RoyceExaminer  
WEBMANGroup Art Unit  
1617**—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—****Priority for Reply**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

**Status** Responsive to communication(s) filed on 8/22/03. This action is FINAL. Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.**Disposition of Claims** Claim(s) 1-37 is/are pending in the application. Of the above claim(s) 13, 17, 28-37 is/are withdrawn from consideration. Claim(s) \_\_\_\_\_ is/are allowed. Claim(s) 1-12, 14-16, 18-27 is/are rejected. Claim(s) \_\_\_\_\_ is/are objected to. Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.**Application Papers** See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948. The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved. The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner. The specification is objected to by the Examiner. The oath or declaration is objected to by the Examiner.**Priority under 35 U.S.C. § 119 (a)-(d)** Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d). All  Some\*  None of the CERTIFIED copies of the priority documents have been received. received in Application No. (Series Code/Serial Number) \_\_\_\_\_. received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

**Attachment(s)** Information Disclosure Statement(s), PTO-1449, Paper No(s). 5 Interview Summary, PTO-413 Notice of Reference(s) Cited, PTO-892 Notice of Informal Patent Application, PTO-152 Notice of Draftsperson's Patent Drawing Review, PTO-948 Other \_\_\_\_\_**Office Action Summary**

Applicant's election with traverse of Group I, cationic cellulose and polydimethylsiloxane in Paper No. 7, filed 4/25/03, is acknowledged. The traversal is on the ground(s) that no burden is shown for the groups or species. This is not found <sup>burden</sup> persuasive because ~~burden~~ for the groups is shown by their classification in entirely separate classes. As to the species, no burden need be shown. Applicants can overcome the election of species requirement by stating on the record that the species are equivalent. However, a rejection over one species shall then apply to all.

The requirement is still deemed proper and is therefore made FINAL.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-12, 14-16, 18-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Guskey (US 5977036).

Guskey teaches 5-50% anionic surfactant, 0.025-3% cationic polymer with a charge density of 0.2-7 meq/gm and a molecular weight of 5k to 10 million, 0.1-10% water insoluble hair styling polymer and water (abstract). Polyquaternium 10 is disclosed (column 8 lines 3-4).

Polydimethylsiloxane is specified (column 22 lines 17-18). Ethylene glycol distearate are disclosed (column 26 line 360).

Antidandruff agents are specified (column 17 line 38) <sup>A</sup> as to the claimed property of coacervate formation ~~is specified~~, such a property must be possessed by the anticipatory composition because it is the same as that claimed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guskey.

Gusky et al is discussed above.

The example takes notice under MPEP 2144.03 that pyridine ~~doing~~ salts are well-known in the art as anti-dandruff agents.

It would have been obvious to one of ordinary skill to add pyridine ~~doing~~ salts to the composition of Guskie because such salts are well-known as anti-dandruff agents.

Claims 10-12, 15, 16, 22-24, 25, 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 10, 11, 15, 16, 22-23 "insoluble" is vague; in what solvent? Water?

In claim 27 anti-dandruff has no antecedent in claim 21. In claim 14, "silicone" has no antecedent in claim 12.

The disclosure is objected to because of the following informalities: in non-elected claim 13 "silicone" has no antecedent in claim 12.

Appropriate correction is required.

Claim 7 contains the trademark/trade names Polyquaternium-10, Polymer LR-30m. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe cationic cellulose Polymers and, accordingly, the identification/description is indefinite.

No claims allowed.

The Examiner requests a product bulletin describing the LR and JR series of polymers manufactured by Amerchol.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward J. Webman whose telephone number is 308-4432. The examiner can normally be reached on Monday-Friday 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Padmanabhan can be reached on 305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 305-3592 for regular communications and 305-1235 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1234.

Webman/tgd  
July 3, 2003

  
TGD  
TOMAS G. WEBMAN  
TELEPHONE NUMBER  
308-1234